RAJENDRA KAUR BAKHTAWAR SINGH

v.

JESWANT SINGH BAKHTAWAR SINGH

HIGH COURT MALAYA, KUALA LUMPUR
LC VOHRAH J
[ORIGINATING MOTION NO. F 61 OF 1985]
12 DECEMBER 1985

LAND LAW: *Private caveat - Removal of - Section 327 of National Land Code - Serious question to be tried - Balance of convenience - Status quo.*

The parties involved here are brother and sister. Some of the funds for the purchase of the land were supplied by their father. The family company - King's Agencies Sdn. Bhd. - and the respondent were involved in the financial transactions relating to the purchase of the land. An irrevocable power of attorney was granted by the applicant to the respondent to deal with the land. The applicant is the registered proprietor of the land in question. The respondent said that he lodged the caveat in his capacity as director and shareholder of King's Agencies Sdn. Bhd. The document of title shows that the land is registered in the individual name of the applicant who appears to have charged it to Development and Commercial Bank Berhad. The applicant is applying under s. 327 of the National Land Code for the removal of the private caveat.

Held:

[1] On the authority of *Eng Mee Yong v. V. Letchumanan* [1979] 2 MLJ 212, it is for the caveator to satisfy the Court that there are sufficient grounds in fact and in law for continuing in force the caveat which has been lodged.

[2] The facts, *inter alia*, indicate that the applicant may be the trustee of the company as alleged together with the respondent's claim to an interest in the land does raise a serious question to be tried.

[3] In all the circumstances of this case, it would be better to maintain the status quo by allowing the private caveat to remain at this stage.

[Application dismissed with costs.]

Case referred to:
Eng Mee Yong v. V. Letchumanan [1979] 2 MLJ 212

Legislation referred to:
National Land Code 1965, s. 327

For the applicant/plaintiff - G. Krishnan; M/s. Krishnan & Co.
For the respondent/defendant - Baharuddeen Abu Bakar; M/s. Baharuddeen & Co.

JUDGMENT

LC Vohrah J:

This is an application under s. 327 of the National Land Code for the removal of a private caveat.

It cannot be disputed that the applicant in this case is the registered proprietor of the land in question (See Exhibit "RK1.", Encl. 2) and on the authority of *Eng Mee Yong v. V. Letchumanan* [1979] 2 MLJ 212, it is for the caveator to satisfy the Court that there are sufficient

grounds in fact and law for continuing in force the caveat which has been lodged. To do so "he must first satisfy the Court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and having done so, he must go on to show that on the balance of convenience it would be better to maintain the *status quo* until the trial of the action, by preventing the caveatee from disposing of his land to some third party."

The respondent has averred in his affidavit (See Encl. 6, para. 3) that he lodged the caveat in his capacity "as director and agent of the company to protect and give notice of the beneficial and equitable interest of the company in the said land". In the statutory declaration supporting his application for entry of a private caveat he has alleged that he was entering the caveat as director and shareholder of King's Agencies Sdn. Bhd. on the ground that the land "was registered in the name of the registered proprietors who are also directors and shareholders of the company as trustees of the company's beneficial interest in and title to the property". The document of title (See Exhibit "RK1", Encl. 2) does not bear this out as it shows that the land is registered in the individual name of the applicant who appears to have charged it to Development and Commercial Bank Berhad. However, from the facts of the case as presented by the affidavits it is clear that the parties involved are actually sister and brother, that some funds were supplied by their father, that their family company and the respondent were involved in the financial transactions relating to the purchase of the land and that an irrevocable power of attorney was granted by the applicant to the respondent to deal with the land. These facts, *inter alia*, indicate that the applicant may be the trustee of the company as alleged and the respondent's claim to an interest in the land, in my view, therefore does raise a serious question to be tried.

As this is essentially a family squabble and although at first sight the conduct of the respondent would seem to be unbrotherly towards the applicant and unfilial towards the deponent of Encl. 3 who has firmly supported the applicant, I think, in all the circumstances of this case, it would be better to maintain the *status quo* by allowing the private caveat to remain at this stage.

The application is dismissed with costs.

Also found at [1986] 1 CLJ 226